

COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION

DATE: August 28, 2017
TO: Supervisor Theo Lipscomb, Chair, County Board of Supervisors
FROM: James Tarantino, Economic Development Director, Department of Administrative Services
SUBJECT: Request authorization to enter into a Contribution and Participation ("Trust") Agreement and a Lease Agreement for land zoned as Parks which will enable the sale of the Crystal Ridge landfill pursuant to an Option to Purchase Agreement and a Development Agreement to support the Ballpark Commons project.

REQUEST

Authorization to enter into a Contribution and Participation ("Trust") Agreement and a Lease Agreement for land zoned as Parks which will enable the sale of the Crystal Ridge landfill pursuant to an Option to Purchase Agreement and a Development Agreement.

BACKGROUND

- Previous Files -
- File 17-334 - Proposed Ballpark Commons Development and potential impact on Milwaukee County
- File 17-366 - The Rock Sports Complex Cancellation and New Lease for Ski Hill in Village of Greendale
- File 17-373 - Amend Sections 68.01 and 71.12 of Ordinances to remove County Trunk Highway K (W. Old Loomis Rd)

File 17-366 stated that the Milwaukee County Board of Supervisors authorizes the Director of Economic Development, Corporation Counsel and the Comptroller, to draft an Option to Purchase, Lease, and Maintenance Reserve Fund Trust Account Agreement ("Final Documents") which shall include the items in the Term Sheets attached to that File; and that the Milwaukee County Board of Supervisors will review all of the Final Documents when presented, including the Option to Purchase; and only when the Milwaukee County Board of Supervisors finds all of the Final Documents acceptable, will it vote to approve the Lease, Maintenance Reserve Fund Trust Account Agreement, and any other documents which are under the County Board's authority. This is a response containing all relevant Final Documents and a request for County Board action.

PROPOSAL

The operator of The Rock Sports Complex, 7900 W. Loomis Rd. in Franklin, has brought forth a proposal to substantially increase the recreational amenities on the property that is currently leased from Milwaukee County. The Ballpark Commons development will be a mixed use district that is anchored by a minor league baseball

stadium also serving the UW-Milwaukee baseball program and other sport facilities that will draw additional commercial investment. When the partnership between Milwaukee County and the operator was entered into in 2011, the intent was to encourage new programming and investment in sports facilities on the former Crystal Ridge landfill and the Ballpark Commons development is the next evolution of that partnership.

The development of Ballpark Commons will require a new long term agreement to replace the existing agreement between Milwaukee County and Michael Zimmerman, who is both the operator of The Rock and also the lead developer behind Ballpark Commons. The current "Sports Park Maintenance and Operations Services Agreement" obligates Milwaukee County to install and maintain landfill infrastructure that includes a methane monitoring and collection system. It is estimated that the replacement of the methane system will require investment of \$3,700,000 every 20 years which is the useful life of the infrastructure. It is also estimated that the cost to monitor and operate the methane collection system is \$167,000 per year. There are other expenses and obligations that may be triggered by the development including those related to the modification of the landfill cap, monitoring of the leachate system, and groundwater monitoring. Under the current agreement, upgrading and repairing the methane collection infrastructure is a County capital project that is competitive with all other discretionary capital requests in the budget process. The proposed transaction establishes a long term strategy for operating and funding the replacement of that system by creating a dedicated funding source and replacement plan. These strategies are codified in the attached Development Agreement, which guarantees the installation of improvements, and the Contribution and Participation ("Trust") Agreement, which guarantees the funding of the improvements among other things. This Trust Agreement has been referred to as the "Maintenance Reserve Fund" in prior Board Files and should be considered the same document that outlines the specific details of the financial relationship of the County and the buyer.

It is proposed that Milwaukee County will sell to the developer the parcels zoned PDD-37 in the City of Franklin pursuant to the attached Option to Purchase, Development Agreement and Contribution and Participation Agreement. An approximately 10 acre portion of the ski hill is located in the Village of Greendale and is zoned Parks. This area would not be sold but rather would be leased to the developer to ensure the ongoing operation of a ski hill.

Through separate action of the County Board, the section of County Highway K that runs through the site would be vacated and rebuilt by the City of Franklin as a public street pursuant to the request of the City to vacate the highway from the Trunk System Map. That request was contingent upon the overall development moving forward.

The overall transaction is structured so that the Developer would be granted an option to purchase the property contingent upon certain requirements. Those requirements will include entering into the agreements listed above and attached to this File, which also includes the required installation of new infrastructure to address noise and light concerns that have been raised by neighbors to the development site.

Noise and Light

The Development Agreement references certain required improvements that the buyer must install to address noise and light concerns.

Light –

- Repositioning of all 223 existing baseball field lights
- Replacing all 11 existing light visors and install 67 new higher-grade light shields on these and additional light poles. In total 78 new light shields will be installed on the lights facing the residential area that is East of S. 76th St.
- The deadline to complete this work is before the Spring 2018 baseball season so that the improvements are operational for all 2018 ballgames.

Noise –

- Buyer must install new decibel monitors in three locations –
 - Between the ballfields and the residential neighborhood East of S. 76th St
 - Adjacent to the maintenance shed on the ski hill
 - Adjacent to the Hawthorne subdivision in Franklin on the west side of the development site
- Improve the location and orientation of the speakers, some of this work has already been completed. Noise can be mitigated by raising speaker height and aligning the sound direction downward.
- Whenever possible, require musical acts to use only the audio sound system provided by The Rock which could have an auto-limiter installed that ties to the decibel reading devices.
- Share a calendar that provides advance notice to the public of programming and special events. All concerts and special events must be announced and noticed around the property.
- The deadline to commence the planning, design, and construction of the new noise mitigation is Spring 2018 and the deadline to complete the new work is no later than November 2018.

Enforcement of Noise and Light Standards –

- The City of Franklin and Village of Greendale have the ability to enforce their own noise and light regulations and the County would serve as a backstop to that enforcement.
- Annual visual inspection of the lights.
- Data collected by the decibel monitors must be shared and made available to the public through reasonable requests by the City, Village, and County.
- County can inspect the decibel monitors.
- An annual report of decibel readings will be provided to the County each year.
- The buyer must receive variance approvals for permitted exceedances of noise and light standards, which shall take place in a noticed public meeting.
- County shall have the right to enforce payment of the penalties specified in the Noise and Light Standards, which may include payment of a double permit fee

for any material violation. If the buyer has more than eight unpermitted material violations in a calendar year, the Operator shall be subject to stepped-up enforcement measures as specified in the Noise and Light Standards. The County, under the terms of this agreement, shall have the right to impose the double permit fee penalty on the Operator if the City declines to do so.

Lease

The buyer must also maintain the operation of the ski hill, which is in land zoned as Park in Greendale, during the duration of the obligation to operate the landfill infrastructure on the land in Franklin subject to this contemplated sale. The buyer may enter into service or operation contracts with other entities to perform the day to day operation of that ski hill, but at all times the buyer will be responsible for the obligations of the lease.

Public Oversight

The Wisconsin Department of Natural Resources has the ultimate oversight of the landfill. This oversight includes reviews of any proposed new infrastructure or work to be done on the site and the ability to modify or deny any proposal. The DNR also has the authority to approve the transfer of the landfill license, which is currently held by Milwaukee County but would be transferred to the buyer in this transaction. As a contingency of this transaction, Wisconsin DNR must approve both the landfill license transfer agreement and a modified landfill closure plan. The transfer of title to the property in no way inhibits the public oversight of the landfill operation through the DNR.

All Final Documents as requested by the Board are attached to this File as well as a summary of the major terms included within each agreement.

RECOMMENDATION

It is recommended that the Milwaukee County Board provide authorization to enter into a Contribution and Participation ("Trust") Agreement and a Lease Agreement for land zoned as Parks which will enable the sale of the Crystal Ridge landfill pursuant to an Option to Purchase Agreement and a Development Agreement to support the Ballpark Commons project.



James Tarantino

Economic Development Director, Department of Administrative Services

Attachments (7): Resolution
 Fiscal Note
 Option to Purchase
 Development Agreement
 Contribution and Participation Agreement
 Lease Agreement – Greendale Ski Hill
 Summary of Final Documents

cc: Chris Abele, County Executive
Scott Manske, Comptroller
John Dargle, Director, Department of Parks, Recreation, and Culture
Parks, Energy, and Environment Committee Members
Teig Whaley-Smith, Director, Department of Administrative Services
Raisa Koltun, Chief of Staff, Office of the County Executive
Kelly Bablitch, Chief of Staff, County Board of Supervisors
Eric Peterson, Government Affairs, Office of the County Executive
Greg High, Director, Architecture and Engineering
Margaret Daun, Corporation Counsel
Steve Cady, Research & Policy Director
Shanin Brown, Committee Coordinator
Stevan Keith, DAS/AE&ES Environmental Services Unit Leader

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4 (ITEM) Authorization to enter into a Contribution and Participation ("Trust")
5 Agreement and a Lease Agreement for land zoned as Parks which will enable the
6 sale of the Crystal Ridge landfill pursuant to an Option to Purchase Agreement and a
7 Development Agreement.

8
9 **RESOLUTION**

10
11 WHEREAS, Milwaukee County is the owner of a former landfill known as
12 Crystal Ridge in the City of Franklin that since 2011 has been operated as an outdoor
13 sports recreational facility under a Sports Park Maintenance and Operations Services
14 Agreement ("Agreement") with The Rock Sports Complex LLC ("Operator"); and
15

16 WHEREAS, the existing Agreement envisioned a relationship wherein the
17 Operator built and maintained recreational amenities that had a minimal impact on the
18 obligation of Milwaukee County to monitor and collect methane gas, maintain the
19 landfill cap, monitor the landfill leachate system, and monitor water quality among
20 other things ("Landfill Infrastructure"); and
21

22 WHEREAS, the Operator is contemplating the development of a mixed use
23 destination district known as Ballpark Commons that incorporates a portion of the
24 Crystal Ridge landfill and the existing Agreement inadequately plans for
25 improvements to the Landfill Infrastructure; and
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27 WHEREAS, the Operator is considering a purchase of the former landfill
28 property in the City of Franklin pursuant to an Option to Purchase and Development
29 Agreement, but would not purchase the land zoned as Parks in the Village of
30 Greendale which contains a portion of the ski hill and this land zoned as parks would
31 continue to be operated under a Lease Agreement; and
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33 WHEREAS, it is estimated that the cost to replace the Landfill Infrastructure is
34 \$3,700,000 in present dollars with full replacement occurring every 20 years as well
35 as an annual operating cost of \$167,000; and
36

37 WHEREAS, the costs and responsibilities to improve and operate the Landfill
38 Infrastructure will be substantially borne by the Operator with some County
39 participation and oversight from the Wisconsin Department of Natural Resources; and
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41 WHEREAS, the financial terms and the relationship between the Operator and
42 the County are outlined in the Contribution and Participation ("Trust") Agreement; and
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44 WHEREAS, Milwaukee County and the Operator recognize the concerns of
45 neighboring property owners such that additional recreational use of the site will
46 require additional infrastructure to mitigate noise and light impacts on adjacent
47 neighborhoods; now, therefore
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49 BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby
50 agrees to cancel the existing Sports Park Maintenance and Operations Services
51 Agreement with The Rock Sports Complex LLC; and

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53 BE IT RESOLVED, that the Milwaukee County Board of Supervisors hereby
54 agrees to cancel the existing Sports Park Maintenance and Operations Services
55 Agreement with The Rock Sports Complex LLC; and

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57 BE IT FURTHER RESOLVED, that the Milwaukee County Board of
58 Supervisors hereby authorizes a new lease between County and The Rock Sports
59 Complex LLC for the ski hill property located in the Village of Greendale pursuant to
60 the Lease Agreement attached to this Resolution; and

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62 BE IT FURTHER RESOLVED, that the Milwaukee County Board of
63 Supervisors hereby authorizes execution of the Contribution and Participation
64 ("Trust") Agreement attached to this Resolution subject to finalization by the Office of
65 Corporation Counsel and the Office of the Comptroller; and

66

67 BE IT FURTHER RESOLVED, that the Milwaukee County Board of
68 Supervisors hereby authorizes the Department of Parks, Recreation, and Culture, the
69 Department of Administrative Services, the Office of Corporation Counsel, and any
70 other Department that may be necessary to execute and record all documents and
71 perform all actions as required to accomplish these tasks; and

72

73 BE IT FURTHER RESOLVED, that the County Executive and County Clerk are
74 authorized to execute any required documents regarding the execution of this
75 Resolution.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: August 28, 2017

Original Fiscal Note

Substitute Fiscal Note

SUBJECT: Authorization to enter into a Contribution and Participation ("Trust") Agreement and a Lease Agreement for land zoned as Parks which will enable the sale of the Crystal Ridge landfill pursuant to an Option to Purchase Agreement and a Development Agreement.

FISCAL EFFECT:

- | | |
|---|---|
| <input type="checkbox"/> No Direct County Fiscal Impact <input checked="" type="checkbox"/> Existing Staff Time Required <input type="checkbox"/> Increase Operating Expenditures (If checked, check one of two boxes below) <input type="checkbox"/> Absorbed Within Agency's Budget <input type="checkbox"/> Not Absorbed Within Agency's Budget <input checked="" type="checkbox"/> Decrease Operating Expenditures <input type="checkbox"/> Increase Operating Revenues <input checked="" type="checkbox"/> Decrease Operating Revenues | <input type="checkbox"/> Increase Capital Expenditures <input checked="" type="checkbox"/> Decrease Capital Expenditures <input type="checkbox"/> Increase Capital Revenues <input type="checkbox"/> Decrease Capital Revenues <input type="checkbox"/> Use of contingent funds |
|---|---|

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

| | Expenditure or Revenue Category | Current Year (full year est.) | Subsequent Year |
|-----------------------------------|---------------------------------|-------------------------------|-----------------|
| Operating Budget | Expenditure | \$20,000 | \$20,000 |
| | Revenue* | \$284,000 | \$288,175 |
| | Net Cost | (\$264,000) | (\$268,175) |
| Capital Improvement Budget | Expenditure | 0 | \$288,000 |
| | Revenue* | 0 | \$3,700,000 |
| | Net Cost | 0 | (\$3,412,000) |

*Costs avoided and transferred to the Buyer.

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.¹ If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

- A. Cancellation of the existing Agreement between the County and The Rock Sports Complex LLC for the sports park on the Crystal Ridge landfill in Franklin, and entering into an Option to Purchase Agreement, a Development Agreement, and a Contribution and Participation ("Trust") Agreement for the sale of the property. Doing so would significantly shift the costs of operating the landfill from the County to the Buyer.
- B. The term sheet outlines the costs more completely, but in summary, cost to create a replacement reserve fund for the methane collection system would be split \$20,000 from the County and \$117,000 from the Developer every year going forward. The cost to upgrade the methane collection system would be supported by a previously allocated \$288,000 from the County and \$3,700,000 from the City of Franklin TID. The City of Franklin will also pay \$170,000 for the creation of a new Oak Leaf Trail extension. The cost to operate the system will shift completely to the Developer which is \$167,000 per year plus a 2.5% inflation.
- C. Current revenue collected by the Department of Parks, Recreation, and Culture of \$25,000 will no longer be collected if the property is sold. Currently allocated \$288,000 in DAS-A&E/E&S would be expended. Future operating and maintenance costs would no longer need to be budgeted.
- D. Revenue is actually deferred or shifted costs from the County to Developer. In the current year, a full year was projected but the sale may be effectuated in a partial year. The total costs avoided are the maintenance reserve costs plus operating expenses plus capital replacement covered by the City of Franklin TID.

Department/Prepared By James Tarantino, Director, DAS-Economic Development

Authorized Signature 

Did DAS-Fiscal Staff Review? Yes No
Did CDBP Review?² Yes No Not Required

¹ If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.
² Community Business Development Partners' review is required on all professional service and public work construction contracts.